

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Yipes Enterprise services, Inc. and  
Yipes Transmission, Inc. (U-6357-C) for Ex Parte  
Grant of the Authority Necessary for the Transfer  
and Sales of Assets.

Application 02-12-021  
(Filed December 17, 2002)

**O P I N I O N****Summary**

This decision grants the joint application of Yipes Enterprise Services, Inc. (New Yipes) and Yipes Transmission, Inc. (Old Yipes) for approval for New Yipes to acquire the assets, regulatory authorizations and operations of Old Yipes.

**Parties to the Transaction**

Old Yipes is a corporation organized and existing under the laws of the State of California. Its principal offices are located at 114 Sansome Street, 14<sup>th</sup> Floor, San Francisco, CA 94104. By Decision (D.) 00-06-068 Old Yipes was granted a certificate of public convenience and necessity (CPCN) to operate in California as a limited facilities-based and resale provider of competitive local exchange services.

New Yipes is a Delaware corporation with principal offices located at 114 Sansome Street, 14<sup>th</sup> Floor, San Francisco, CA 94104 and is a wholly owned subsidiary of Yipes Holdings, Inc., also a Delaware corporation.

**Proposed Transaction**

Since April 19, 2002, Old Yipes has been operating under the protection of the Bankruptcy Court for the Northern District of California (San Francisco Division) pursuant to Chapter 11 of the Bankruptcy Code. New Yipes has agreed to acquire and Old Yipes has agreed to sell the California operations, authorizations and assets of Old Yipes, subject to necessary approvals. The sale will be accomplished by implementation of the Plan of Reorganization (Plan), jointly sponsored by the applicants and approved by the Bankruptcy Court on November 8, 2002. Through the Plan, applicants propose to complete a series of transactions whereby New Yipes will acquire the assets, regulatory authorizations and operations of Old Yipes. New Yipes will replace Old Yipes as the certificated Yipes entity in California. New Yipes will continue to provide services to existing customers under the same rates, terms and conditions of service as that service is currently provided.

Applicants state that, of an approximate \$57 million funding commitment from its investors, New Yipes had already received more than \$40 million and expected to receive the balance by the end of 2002. Applicants contend that this funding should suffice to allow New Yipes to operate until it turns cash flow positive, which is expected to occur near the end of 2003.

Applicants submit that the public interest will be served. The proposed Plan is expected to invigorate competition in California. It will allow New Yipes to build on the foundation provided by Old Yipes and position New Yipes to compete effectively as a leading provider of services using Gigabit Ethernet and Internet Protocol. Also, in light of the precarious financial position of Old Yipes, the proposed Plan will provide greater stability to customers who receive services from New Yipes and ensure that those customers can continue to receive

services without interruption. Applicants expect that the implementation of the Plan will be virtually transparent to customers, since the Plan will not cause a change in the rates, terms, and conditions of services that Yipes customers currently receive. In addition, customers will receive notification of the transfer as required by the Commission for such transfers.

### **Discussion**

Pub. Util. Code § 854 requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state . . . .” The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since Old Yipes possesses a CPCN to operate as a limited facilities-based and resale provider of competitive local exchange telecommunications services within California, we will apply the requirements for such authority to New Yipes.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a limited facilities-based and resale provider of competitive local exchange services must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm’s start-up costs. In

addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Applicants provided financial statements for New Yipes, which demonstrate that it has sufficient resources to meet our financial requirements. Biographies of senior management, many of whom have previous experience with Old Yipes, have also been included with the application. We find that our requirement for technical expertise is satisfied.

Implementation of the Plan will reinforce New Yipes's status as a viable competitor. If the Plan is implemented in an expeditious manner, customers' service will continue without interruption. It will also be transparent to customers. Therefore, the proposed transaction is not adverse to the public interest.

As discussed above, New Yipes has satisfied our financial and experience requirements, and the proposed transaction is not adverse to the public interest. Therefore, we will grant the application.

### **Procedural Matters**

In Resolution ALJ 176-3105, dated January 16, 2003, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

### **Request for Confidentiality**

Applicants request that the financial statements filed with this application be kept under seal. Applicants represent that the statements include commercially sensitive, non-public information, which, if revealed, would place

Applicants at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

**Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Sec. 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

**Assignment of Proceeding**

Geoffrey Brown is the Assigned Commissioner and David Fukutome is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. By D.00-06-068 Old Yipes was granted a CPCN to operate in California as a limited facilities-based and resale provider of competitive local exchange services.
2. Under the terms of a Joint Plan of Reorganization approved by the Bankruptcy Court on November 8, 2002, New Yipes will acquire the assets, regulatory authorizations and operations of Old Yipes.
3. Customers will continue to receive service under the same rates, terms, and conditions after the transaction.
4. New Yipes has sufficient financial resources to meet the Commission's requirements to provide limited facilities-based and resold competitive local exchange services.
5. New Yipes possesses the necessary technical expertise required by the Commission.
6. Notice of this application appeared on the Commission's Daily Calendar on December 19, 2002.
7. There were no protests to this application.

8. No hearings are necessary.

9. Public disclosure of financial information pertaining to New Yipes's income statement and balance sheet, included in this application, would place New Yipes at an unfair business disadvantage.

**Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a limited facilities-based and resale provider of competitive local exchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. New Yipes meets the Commission's requirements for the issuance of a CPCN to provide limited facilities-based and resold competitive local exchange telecommunications services.

3. The transaction is not adverse to the public interest.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

5. Applicant's request to file its financial information under seal should be granted for 2 years.

**O R D E R**

**IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Section 854, the joint application of Yipes Enterprise Services, Inc. (New Yipes) and Yipes Transmission, Inc. (Old Yipes) for approval for New Yipes to acquire the assets, regulatory authorizations and operations of Old Yipes is approved.

2. Applicant's request that the financial information pertaining to New Yipes's income statement and balance sheet, filed with this application as

Exhibit C, be kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

3. If Applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

4. This application is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.